

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 10-435 AG (RNBx)	Date	May 5, 2010
Title	CHRISTOPHER CANNING, et al. v. HOMEQ		

Present: The Honorable	ANDREW J. GUILFORD
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Lisa Bredahl	Not Present	
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Deputy Clerk	Court Reporter / Recorder	Tape No.
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Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: [IN CHAMBERS]

1. **ORDER TO SHOW CAUSE RE SANCTIONS**
2. **ORDER SETTING BRIEFING SCHEDULE RE PRELIMINARY INJUNCTION**

1. ORDER TO SHOW CAUSE RE SANCTIONS

Plaintiffs Christopher Canning and Rose Canning (“Plaintiffs”) originally filed this case in state court. On April 2, 2010, the state court judge issued an Order to Show Cause, ordering Defendant HomeQ (“Defendant”) to show “why a preliminary injunction should not be ordered restraining and enjoining [Defendant and others] from proceeding with the foreclosure proceedings against” Plaintiffs’ home. (Application, Ex. 3.) The state court judge issued a temporary restraining order prohibiting Defendant from selling Plaintiffs’ home “[p]ending hearing on the Order to Show Cause,” which was scheduled for April 20, 2010.

On April 8, 2010, Defendant removed this case from state to federal court by filing a Notice of Removal. (Doc. 1.) Defendant’s Notice of Removal did not inform the Court that a temporary restraining order had been issued in state court.

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The removal statute provides that,

[a] defendant . . . desiring to remove any civil action . . . from a State court shall file in the district court . . . a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, *together with a copy of all process, pleadings, and orders served upon such defendant . . . in such action.*

28 U.S.C. § 1446(a) (emphasis added). The Court is concerned that Defendant has failed to comply with the letter and the spirit of Section 1446(a) by failing to attach a copy of the state court's temporary restraining order to the Notice of Removal, and failing to even mention in the Notice of Removal that such an order had been issued. Thus, the Court ORDERS Defendant to appear at 10:00 a.m. on May 17, 2010 and show cause why sanctions should not be issued for failure to comply with 28 U.S.C. § 1446(a).

This Order to Show Cause shall be heard together with the Order to Show Cause why a preliminary injunction should not issue.

2. ORDER SETTING BRIEFING SCHEDULE RE PRELIMINARY INJUNCTION

Considering the time constraints involved, the Court finds the following briefing schedule appropriate concerning the Order to Show Cause why a preliminary injunction should not issue. Defendant shall file any opposition papers it wishes by 11:00 a.m. on Monday, May 10, 2010. Plaintiffs shall file any reply papers by 2:00 p.m. on Thursday, May 13, 2010.

If the parties desire more time to submit their papers, they should file a stipulation for continuance and extension. The stipulation should clearly set forth the date for the hearing, and the due date for opposition and reply papers. It should also make clear that the parties stipulate to the continuing effectiveness of the temporary restraining order

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pending the Court's ruling on the Order to Show Cause why a preliminary injunction should not issue.

Initials of
Preparer

_____ : _____
lmb